

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SEAN FISH, et al.,

Plaintiff(s),

vs.

LIBERTY MUTUAL FIRE
INSURANCE CO., et al.,

Defendant(s).

Case No. 2:13-cv-00326-APG-NJK

ORDER DENYING MOTION TO
STRIKE
(Docket No. 7)

Pending before the Court is Defendant Western United Insurance Company's ("Defendant") motion to strike language in paragraph 44 of the complaint. Docket No. 7. Plaintiffs filed a response and Defendant filed a reply. *See* Docket Nos. 9, 15. Having reviewed the materials presented, the Court finds the motion is properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed below, the motion to strike is **DENIED**.

A motion to strike material from a pleading is made pursuant to Fed. R. Civ. P. 12(f), which allows the striking of any material that is "redundant, immaterial, impertinent or scandalous." The essential function of a Rule 12(f) motion is to "avoid the expenditure of time and money that may arise from litigating spurious issues by dispensing with those issues prior to trial." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517 (1994). "Rule 12(f) motions are generally disfavored because they are often used as delaying tactics, and because of the limited importance of pleadings in federal practice." *Bureerong v. Uvawas*, 922 F. Supp.

1 1450, 1478 (C.D. Cal. 1996) (internal citations omitted); *see also Nevada Fair Housing Ctr., Inc. v.*
2 *Clark County*, 265 F. Supp. 2d 1178, 1187 (D. Nev. 2008).

3 Defendant's motion seeks to strike the reference to itself as a "fiduciar[y]" in paragraph 44
4 of the Complaint. Defendant acknowledges that the Nevada Supreme Court has expressly approved
5 a jury instruction that "[t]he duty owed by an insurance company to an insured is fiduciary in
6 nature." Reply at 3 (quoting *Powers v. United Serv. Auto. Assoc. & USAA Cas. Ins. Co.*, 114 Nev.
7 690, 701 (1998)). But Defendant argues that this duty is only "akin" to that of a fiduciary and not
8 equivalent to it. *See id.* In short, Defendant asserts that "Plaintiffs have alleged a fiduciary duty
9 rather than a special contractual duty akin to a fiduciary duty." *See id.* at 5.

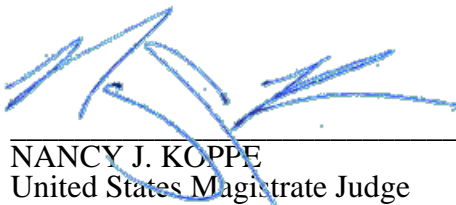
10 Defendant fails to cite to any case law of any kind addressing Rule 12(f), let alone case law
11 supporting its assertion that striking is appropriate in this matter. *See* Mot. at 5-6; Reply at 4-5. Nor
12 is Defendant's reasoning persuasive. Because the Complaint refers to Defendant as a "fiduciar[y]"
13 rather than "akin to a fiduciary," Defendant worries that Plaintiffs "attempt[] to impose a higher
14 duty" on Defendant. *See* Mot. at 6. Suffice it to say, the Court is not persuaded that Plaintiffs' use
15 of the word "fiduciary" in their complaint rather than the phrase "akin to a fiduciary" will result in
16 the imposition of a higher duty on Defendant.

17 The Court is simply not persuaded that a Rule 12(f) motion is the proper vehicle for
18 determining the contours of Defendant's duty. Nor is it clear to the Court that a dispute between the
19 parties of the contours of the duty owed even exists.

20 Accordingly, the motion is hereby **DENIED**.

21 IT IS SO ORDERED.

22 DATED: April 18, 2013

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NANCY J. KOPPE
United States Magistrate Judge